

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

M & I MARSHALL & ILSLEY BANK

Plaintiff

vs

No. 08-CIV-00778-MCA/WDS

FD-RE, L.L.C., LIBERTY BUILDING
SYSTEMS, INC., and FAMILY DOLLAR
STORES OF NEW MEXICO

Defendants.

**ORDER APPROVING SPECIAL MASTER'S
REPORT AND CONFIRMING FORECLOSURE SALE**

This cause coming on for hearing upon the Special Master's Report and Account of Sale, the Special Master having moved that the Report be approved, and the sale be confirmed, the Court having examined the Report and having been fully advised and informed in the premises, and having examined a copy of the three proposed Special Master's Deeds, which are attached as Exhibits A, B and C hereto, thereupon, upon consideration thereof, it is:

ORDERED, ADJUDGED AND DECREED as follows:

1. The Special Master's Report be, and the same hereby is, approved, and the foreclosure sale therein reported is in all respects ratified and confirmed.
2. The Special Master's Deeds be, and the same hereby are, approved, and the Special Master is ordered to deliver the Deeds to M & I Marshall & Ilsley Bank.
3. M & I Marshall & Ilsley Bank, as purchasers at the foreclosure sale herein, owns title to the real estate described herein.

Magdalena Property

4. The real property being situated in Socorro County, New Mexico, and described as follows:

Lots Numbered One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), in Block Sixteen (16) of the Original Townsite of Magdalena, Socorro County, New Mexico.

and which is also described in the Report and Account of Sale by Special Master herein and in the Special Master's Deed, is free and clear of all claims of any parties to this action or any parties bound by these proceedings, except the right of any person entitled to redeem as provided in the Judgment for Debt and Foreclosure.

5. The costs of publication in the amount of \$397.28; the Special Master's fee in the amount of \$666.67 and interest accruing from the Judgment for Debt and Foreclosure to date of sale in the amount of \$11,272.92 are proper items of expense and should be allowed as a part of the indebtedness against the property as specified in the Special Master's Report.

6. David H. Thomas, III, be and hereby is shall be relieved and discharged as Special Master in this cause.

7. A deficiency judgment in the amount of \$533,811.20 be and hereby is awarded against Defendant FD-RE, L.L.C.

8. Upon notice to the occupants and a hearing, purchaser shall be entitled to a Writ of Assistance directed to the Sheriff of Socorro County, New Mexico, commanding him to place the purchaser at the Special Master's sale in possession of the property described above and to remove and eject therefrom all and every person or persons holding or retaining the same or any part thereof against the purchaser at the Special Master's sale and that possession of the property

be delivered to the purchaser, its agents or assigns immediately and forthwith and without delay and thereafter as is necessary to maintain, keep and defend and cause to be kept, maintained and defended the possession of the property in the possession of the purchaser, all in accordance with this Order.

Ft. Sumner Property

9. The real property being situated in DeBaca County, New Mexico, and described as follows:

Lots 3, 4 and 5 in Block 34 of the Parker Addition to Fort Sumner,
Village of Fort Sumner, De Baca County, New Mexico;
and

That Portion of Lot 11 of Section 20, Township 3 North, Range 26
East, N.M.P.M., De Baca County, New Mexico, More Particularly
Described as Follows, to wit:

Commencing at the Northeast Corner of Said Lot 11, Section 20,
Township 3 North, Range 26 East, N.M.P.M., and Point of
Beginning;

Thence South 133.1 Feet to the Southeast Corner of Said Lot 11;

Thence Following the South Line of Said Lot 11 in a
Northwesterly Direction Following the North Boundary Line of
U.S. Highway No. 60 to a Point Directly South of the Middle of
the Alley of Block 34 of the Parker Addition to Fort Sumner.

Thence North a Distance of 33 Feet to a Point on the North Line of
Said Lot 11;

Thence East a Distance of 241.8 Feet to the Point of Beginning.

and which is also described in the Report and Account of Sale by Special Master herein and in the Special Master's Deed, is free and clear of all claims of any parties to this action or any parties bound by these proceedings, except the right of any person entitled to redeem as provided in the Judgment for Debt and Foreclosure.

10. The costs of publication in the amount of \$397.28; the Special Master's fee in the amount of \$666.67 and interest accruing from the Judgment for Debt and Foreclosure to date of sale in the amount of \$8,784.20 are proper items of expense and should be allowed as a part of the indebtedness against the property as specified in the Special Master's Report.

11. David H. Thomas, III, be and hereby is shall be relieved and discharged as Special Master in this cause.

12. A deficiency judgment in the amount of \$405,158.11 be and hereby is awarded against Defendant FD-RE, L.L.C

13. Upon notice to the occupants and a hearing, purchaser shall be entitled to a Writ of Assistance directed to the Sheriff of DeBaca County, New Mexico, commanding him to place the purchaser at the Special Master's sale in possession of the property described above and to remove and eject therefrom all and every person or persons holding or retaining the same or any part thereof against the purchaser at the Special Master's sale and that possession of the property be delivered to the purchaser, its agents or assigns immediately and forthwith and without delay and thereafter as is necessary to maintain, keep and defend and cause to be kept, maintained and defended the possession of the property in the possession of the purchaser, all in accordance with this Order.

Capitan Property

14. The real property being situated in Lincoln County, New Mexico and described as follows:

Lots 13, 14, 15, 16, 17, 18, 19 and 20, Block 24 of the TOWN OF CAPITAN, Lincoln County, New Mexico, as shown by the plat thereof filed in the office of the County Clerk of Lincoln County, March 3, 1900;

TOGETHER WITH that portion of Ruidoso Avenue located in the Village of Capitan which is contiguous to Lots 13, 14, 15, 16, 17, 18, 19 and 20, of Block 24, as shown by the original plat of the Village of Capitan filed in the office of the County Clerk and Ex-officio Recorder of Lincoln County, New Mexico, and which extends to the boundaries of said lots and to the center line of said Ruidoso Avenue.

and which is also described in the Report and Account of Sale by Special Master herein and in the Special Master's Deed, is free and clear of all claims of any parties to this action or any parties bound by these proceedings, except the right of any person entitled to redeem as provided in the Judgment for Debt and Foreclosure.


15. The costs of publication in the amount of \$397.28; the Special Master's fee in the amount of \$666.67 and interest accruing from the Judgment for Debt and Foreclosure to date of sale in the amount of \$10,236.63 are proper items of expense and should be allowed as a part of the indebtedness against the property as specified in the Special Master's Report.

16. David H. Thomas, III, be and hereby is shall be relieved and discharged as

Special Master in this cause.

17. A deficiency judgment in the amount of \$415,240.97 be and hereby is awarded against Defendants FD-RE, L.L.C.

18. Upon notice to the occupants and a hearing, purchaser shall be entitled to a Writ of Assistance directed to the Sheriff of McKinley County, New Mexico, commanding him to place the purchaser at the Special Master's sale in possession of the property described above and to remove and eject therefrom all and every person or persons holding or retaining the same or any part thereof against the purchaser at the Special Master's sale and that possession of the property be delivered to the purchaser, its agents or assigns immediately and forthwith and without delay and thereafter as is necessary to maintain, keep and defend and cause to be kept, maintained and defended the possession of the property in the possession of the purchaser, all in accordance with this Order.

 7/24/09
M. CHRISTINA ARMIJO
UNITED STATES DISTRICT JUDGE

Submitted by:

MODRALL, SPERLING, ROEHL, HARRIS
& SISK, P.A.

By SUBMITTED BY

Paul M. Fish
Attorneys for Plaintiff
500 Fourth Street, Suite 1000
Post Office Box 2168
Albuquerque, New Mexico 87103
(505) 848-1800

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

M & I MARSHALL & ILSLEY BANK

Plaintiff

Vs

No. 08-CIV-00778-MCA/WDS

FD-RE, L.L.C., LIBERTY BUILDING
SYSTEMS, INC., and FAMILY DOLLAR
STORES OF NEW MEXICO

Defendants.

SPECIAL MASTER'S DEED

THIS INDENTURE is made this _____ day of July, 2009, between David H. Thomas, III, Special Master, and M&I Marshall & Ilsley Bank.

RECITALS

1. In Cause No. 08-CIV-00778-MCA/WDS in the United States District Court for the District of New Mexico entitled M&I Marshall & Ilsley Bank v. FD-RE, L.L.C., Liberty Building Systems, Inc., and Family Dollar Stores of New Mexico, there was entered on May 8, 2009, a Judgment for Debt and Foreclosure (hereafter "Judgment") whereby it was adjudged that the Defendants were indebted to the Plaintiff regarding the Magdalena Loan in the amount, as of April 15, 2009, of \$564,167.74 together with interest at the rate accrued at the floating rate set forth in the executed promissory note plus certain additional costs, and the real estate described herein was ordered to be sold to settle the claim of the Plaintiff; and
2. David H. Thomas, III was appointed as Special Master by the Judgment and directed to conduct the sale pursuant to the decree and law in such case, and after due notice being given as provided by law the sale was duly and regularly held on July 17, 2008, at 10:00 a.m. at the

Socorro County Courthouse, located in Socorro, New Mexico, and

3. M&I Marshall & Ilsley Bank was the highest and best bidder for the following described real estate in the following amount: \$50,000, and said bid of M&I Marshall & Ilsley Bank, was accepted by the Special Master and the property herein conveyed was sold to M&I Marshall & Ilsley Bank, subject to the approval of the Court and subject to the right of any persons entitled to redeem as provided in the Decree of Foreclosure; and

4. The sale was duly approved by the Court and the undersigned Special Master has, by order of the Court, been authorized and directed to deliver this Deed to the purchaser, conveying all of the right, title and interest of the Defendants, and any and all persons bound by the proceeding in the aforementioned cause, free and clear of all claims of any parties bound by these proceedings, save and except the right of redemption as heretofore provided and any unpaid property taxes, municipal liens or assessments, entitled to statutory priority, or any liens or encumbrances not foreclosed by the Judgment.

NOW, THEREFORE, for and in consideration of the sum of \$50,000 paid by M&I Marshall & Ilsley Bank, which is hereby acknowledged, I, David H. Thomas, III, by virtue of the authority vested in me by the law and by the decree of the United States District Court for the District of New Mexico, hereinabove referred to, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey to M&I Marshall & Ilsley Bank, its successors and assigns, the following described real estate situated in the County of Socorro, State of New Mexico, to-wit:

Lots Numbered One (1), Two (2), Three (3), Four (4), Five (5) and Six (6), in Block Sixteen (16) of the Original Townsite of Magdalena, Socorro County, New Mexico.

The real property described above is referred to hereafter as "the Property."

Together with all and singular the hereditaments and appurtenances thereto or in any way appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; pursuant to the decree of the Court above referred to, this conveyance is free of the claims of any parties bound by the action hereinabove referred to and any and all persons claiming by, under or through them, save and except the right of any persons entitled to redeem as heretofore provided; to have and to hold the premises above described with the appurtenances unto M&I Marshall & Ilsley Bank and its successors and assigns forever, at

M & I Marshall & Ilsley Bank
1201 N. W. Briarcliff Parkway
Kansas City, MO 64116

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of July, 2009.

David H. Thomas, III
Special Master

STATE OF NEW MEXICO)
) .ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on the ____ day of July, 2009 by David H. Thomas, III.

(Seal)

Notary Public

My commission expires:

EXHIBIT "A"

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

M & I MARSHALL & ILSLEY BANK

Plaintiff

Vs

No. 08-CIV-00778-MCA/WDS

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STORES OF NEW MEXICO

Defendants.

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2. David H. Thomas, III was appointed as Special Master by the Judgment and directed to conduct the sale pursuant to the decree and law in such case, and after due notice being given as provided by law the sale was duly and regularly held on July 17, 2008, at 4:00 p.m. at the DeBaca County Courthouse, located in Ft. Sumner, New Mexico, and

3. M&I Marshall & Ilsley Bank was the highest and best bidder for the following described real estate in the following amount: \$50,000, and said bid of M&I Marshall & Ilsley Bank, was accepted by the Special Master and the property herein conveyed was sold to M&I Marshall & Ilsley Bank, subject to the approval of the Court and subject to the right of any persons entitled to redeem as provided in the Decree of Foreclosure; and

4. The sale was duly approved by the Court and the undersigned Special Master has, by order of the Court, been authorized and directed to deliver this Deed to the purchaser, conveying all of the right, title and interest of the Defendants, and any and all persons bound by the proceeding in the aforementioned cause, free and clear of all claims of any parties bound by these proceedings, save and except the right of redemption as heretofore provided and any unpaid property taxes, municipal liens or assessments, entitled to statutory priority, or any liens or encumbrances not foreclosed by the Judgment.

NOW, THEREFORE, for and in consideration of the sum of \$50,000 paid by M&I Marshall & Ilsley Bank, which is hereby acknowledged, I, David H. Thomas, III, by virtue of the authority vested in me by the law and by the decree of the United States District Court for the District of New Mexico, hereinabove referred to, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey to M&I Marshall & Ilsley Bank, its successors and assigns, the following described real estate situated in the County of DeBaca, State of New Mexico, to-wit:

Lots 3, 4 and 5 in Block 34 of the Parker Addition to Fort Sumner, Village of Fort Sumner, De Baca County, New Mexico;
and

That Portion of Lot 11 of Section 20, Township 3 North, Range 26 East, N.M.P.M., De Baca County, New Mexico, More Particularly Described as Follows, to wit:

Commencing at the Northeast Corner of Said Lot 11, Section 20, Township 3 North, Range 26 East, N.M.P.M., and Point of Beginning;

Thence South 133.1 Feet to the Southeast Corner of Said Lot 11;

Thence Following the South Line of Said Lot 11 in a Northwesterly Direction Following the North Boundary Line of U.S. Highway No. 60 to a Point Directly South of the Middle of the Alley of Block 34 of the Parker Addition to Fort Sumner.

Thence North a Distance of 33 Feet to a Point on the North Line of Said Lot 11;

Thence East a Distance of 241.8 Feet to the Point of Beginning.

The real property described above is referred to hereafter as "the Property."

Together with all and singular the hereditaments and appurtenances thereto or in any way appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; pursuant to the decree of the Court above referred to, this conveyance is free of the claims of any parties bound by the action hereinabove referred to and any and all persons claiming by, under or through them, save and except the right of any persons entitled to redeem as heretofore provided; to have and to hold the premises above described with the appurtenances unto M&I Marshall & Ilsley Bank and its successors and assigns forever, at

M & I Marshall & Ilsley Bank
1201 N. W. Briarcliff Parkway
Kansas City, MO 64116

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of July, 2009.

STATE OF NEW MEXICO)
) .ss
COUNTY OF BERNALILLO)

David H. Thomas, III
Special Master

This instrument was acknowledged before me on the _____ day of July, 2009 by David
H. Thomas, III.

(Seal)

Notary Public

My commission expires:

EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

M & I MARSHALL & ILSLEY BANK

Plaintiff

Vs

No. 08-CIV-00778-MCA/WDS

FD-RE, L.L.C., LIBERTY BUILDING
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RECITALS

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2. David H. Thomas, III was appointed as Special Master by the Judgment and directed to conduct the sale pursuant to the decree and law in such case, and after due notice being given as provided by law the sale was duly and regularly held on July 17, 2008, at 1:30 p.m. at the

Lincoln County Courthouse, located in Carrizozo, New Mexico, and

3. M&I Marshall & Ilsley Bank was the highest and best bidder for the following described real estate in the following amount: \$110,000, and said bid of M&I Marshall & Ilsley Bank, was accepted by the Special Master and the property herein conveyed was sold to M&I Marshall & Ilsley Bank, subject to the approval of the Court and subject to the right of any persons entitled to redeem as provided in the Decree of Foreclosure; and

4. The sale was duly approved by the Court and the undersigned Special Master has, by order of the Court, been authorized and directed to deliver this Deed to the purchaser, conveying all of the right, title and interest of the Defendants, and any and all persons bound by the proceeding in the aforementioned cause, free and clear of all claims of any parties bound by these proceedings, save and except the right of redemption as heretofore provided and any unpaid property taxes, municipal liens or assessments, entitled to statutory priority, or any liens or encumbrances not foreclosed by the Judgment.

NOW, THEREFORE, for and in consideration of the sum of \$110,000 paid by M&I Marshall & Ilsley Bank, which is hereby acknowledged, I, David H. Thomas, III, by virtue of the authority vested in me by the law and by the decree of the United States District Court for the District of New Mexico, hereinabove referred to, have granted, bargained, sold and conveyed, and by these presents do grant, bargain, sell and convey to M&I Marshall & Ilsley Bank, its successors and assigns, the following described real estate situated in the County of Lincoln, State of New Mexico, to-wit:

Lots 13, 14, 15, 16, 17, 18, 19 and 20, Block 24 of the TOWN OF CAPITAN, Lincoln County, New Mexico, as shown by the plat thereof filed in the office of the County Clerk of Lincoln County, March 3, 1900;

TOGETHER WITH that portion of Ruidoso Avenue located in the Village of Capitan which is contiguous to Lots 13, 14, 15, 16, 17, 18, 19 and 20, of Block 24, as shown by the original plat of the Village of Capitan filed in the office of the County Clerk and Ex-officio Recorder of Lincoln County, New Mexico, and which extends to the boundaries of said lots and to the center line of said Ruidoso Avenue.

The real property described above is referred to hereafter as "the Property."

Together with all and singular the hereditaments and appurtenances thereto or in any way appertaining and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; pursuant to the decree of the Court above referred to, this conveyance is free of the claims of any parties bound by the action hereinabove referred to and any and all persons claiming by, under or through them, save and except the right of any persons entitled to redeem as heretofore provided; to have and to hold the premises above described with the appurtenances unto M&I Marshall & Ilsley Bank and its successors and assigns forever, at

M & I Marshall & Ilsley Bank
1201 N. W. Briarcliff Parkway
Kansas City, MO 64116

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of July, 2009.

David H. Thomas, III
Special Master

STATE OF NEW MEXICO)
).ss
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on the _____ day of July, 2009 by David H. Thomas, III.

(Seal)

Notary Public

My commission expires:

EXHIBIT "C"